CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 173

JACK WALKER, PETITIONER,

vs.

JAMES A. JOHNSTON, WARDEN, UNITED STATES PENITENTIARY, ALCATRAZ, CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 22, 1940.

CERTIORARI GRANTED OCTOBER 28, 1940.

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SUPREME COURT OF THE UNITED STATES

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INDEX.

	Original	Print
Record from D. C. U. S., Northern District of California	1	1
Affidavit in forma pauperis and order thereon	1	1
Petition for writ of habeas corpus	3	2
Recital as to Exhibits "A" to "D", inc.	7	4
Exhibit "E"—Clerk's certificate	8	4
Order to show cause	9	5
Return to order to show cause	10	5
Exhibit "A"—Indictment	12	7
Minutes of trial	16	9
Minutes of sentence	18	10
Commitment and marshal's return	19	11
Docket entries	21	12
Transfer order to Alcatraz	24	14
Record of Court commitment	25	16
Affidavit of Clyde O. Eastus	26	17
Affidavit of Joe H. Jones	28	18
Affidavit of Elmer J. Reed	31	20
Order appointing attorney for petitioner	32	21

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 7, 1940.

	Original	Print
Record from D. C. U. S., Northern District of California—Continued		
Answer of petitioner to return to order to show cause	33	21
Exhibit "A"—Letter, deputy clerk to Jack Walker, February 7, 1939	38	25
Order denying petition for writ of habeas corpus	39	25
Affidavit for appeal in forma pauperis	40	26
Order permitting appeal in forma pauperis	42	27
Notice of appeal	43	28
Praecipe for record	44	28
Clerk's certificate (omitted in printing)	46	
Proceedings in U. S. C. C. A., Ninth Circuit	47	29
Order of submission	47	29
Order directing filing of opinion and decree	48	30
Opinion, Haney, J.	49	30
Decree	54	34
Order denying petition for rehearing	55	35
Clerk's certificate (omitted in printing)	56	
Order extending time within which to apply for writ of certiorari	57	35
Order allowing certiorari	58	35

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 22969-R

JACK WALKER, Petitioner,

vs.

JAMES A. JOHNSTON, Warden, U. S. Penitentiary, Alcatraz, California, Respondent

AFFIDAVIT IN FORMA PAUPERIS

Comes now Jack Walker, who first upon being sworn, deposes and says, to wit:

That he is a citizen of the United States by birth and of legal age and that he is in the custody of the United States and is being confined in the U. S. Penitentiary on the Island of Alcatraz in the State of California and that he prays to file a petition for a writ of habeas corpus to test the legality of his imprisonment and detention, but that he is without funds and unable to pay the cost of the filing of the said petition for the writ of habeas corpus or to give bond in lieu thereof and that he further states that he verily believes he is lawfully entitled to the redress he seeks herein and that the petition is meritorious and brought forth in good faith.

Wherefore, Jack Walker, now prays the Honorable District Court of the United States at San Francisco, for the permission to file and to proceed to prosecute the said petition for the writ of habeas corpus in this Honorable Court without cost or fee and in Forma Pauperis.

Jack Walker, Petitioner.

(Verification.)

[fol. 2]

ORDER

Upon reading the foregoing affidavit, and upon good cause appearing therefore:

It is hereby ordered, that the aforesaid Jack Walker be, and is, permitted and allowed to file his petition for a writ

of habeas corpus in this Court and to prosecute the same without the payment of Court costs and filing fees.

A. F. St. Sure, Hon. United States District Judge.

[fol. 3] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—Filed March 28, 1939

Petition for the writ of habeas corpus to the Honorable Judge of the U. S. District Court to Command the above-named respondent to grant the petitioner herein his Constitutional rights as guaranteed by the Constitution of the United States and as prayed for by said petitioner or show good and sufficient cause in the adverse thereof.

Comes now Jack Walker, the Petitioner, in the above-entitled cause and respectfully shows to this Honorable Court that he is being unlawfully restrained of his liberty by being imprisoned in the U. S. Penitentiary and in the custody of James A. Johnston, Warden at Alcatraz Island, California, that said petitioner and said respondent are within the lawful jurisdiction of this Honorable Court.

The petitioner prays to state and to further show with certain exhibits, to wit:

That on the 9th day of March, 1936 in the District Court of the United States, for the Northern District of Texas, a certain Grand Jury returned 'A True Bill'. The true bill being an indictment charging violation of Title 12 U. S. C. A. Section 588b and the said statute, etc., being a lawful statute of the United States, and of which said certified copy of indictment in the petitioner's cause is attached hereto and made a part hereof and marked as "Exhibit A".

[fol. 4] "That on the 28th day of April 1936, this case and cause as set forth herein Exhibit 'A' and styled case No. 632—Criminal come for trial and come the United States by her attorney, come also Jack Walker the petitioner herein in person and without legal counsel, and after the said Jack Walker entered a plea of 'Guilty' and the jury having heard the said plea and having heard the testimony of witnesses and the Charge of the Court, returned the following verdict: We find the petitioner guilty, and which record of

said trial and conviction is attached hereto and made a part hereof and marked as Exhibit "B". What on the 1st day of May, 1936, the aforesaid United States Court having received the aforesaid verdict as set forth herein in Exhibit "B" approved same, and it ordered and adjudged his punishment to be an imposition of twelve (12) years in the U. S. Penitentiary at Leavenworth, Kansas, and which record of sentence is attached hereto and made a part hereof and marked as Exhibit 'C' ".

"That on the 4th day of May, 1936, the petitioner herein was committed to the U. S. Penitentiary at Leavenworth, Kansas, all of which said record of commitment is attached hereto and made a part hereof and marked as Exhibit "D".

"That on the 6th day of March, 1939 an affidavit certifying the foregoing records, to wit: Indictment, Judgment, Sentence and commitment, are true copies of the records in cause No. 632-Cr., styled—the United States vs. Jack Walker. Which record of affidavit and oath is attached hereto and made a part hereof and marked as Exhibit "E".

The petitioner further respectfully shows that his detention and imprisonment are illegal and unlawful for the following reasons:

[fol. 5] First—Because he was deprived of his liberty without having the assistance of counsel, because he did not waive his lawful right for counsel, because on the 23rd day of May, 1938, the Supreme Court ruled in the Case of Johnson vs. Zerbst U. S. 58 S. Ct. 1019, that under the Sixth Amendment to the Constitution of the United States, a Federal Court has no power of authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel, see also Brest v. Johnston, No. 22862-L.

Second—Because the trial Court did not ask the petitioner herein if he wanted counsel, or instruct him that he was entitled to counsel. The petitioner herein did not know that he was entitled to counsel unless he had the money to pay for counsel, to that effect, and therefore he could not and did not competently waive his constitutional rights for counsel. In the case of Johnson vs. Zerbst herein mentioned, the Supreme Court held that if the accused is not represented by counsel and has not competently and intelligently waived his constitutional right, the jurisdiction of the court is lost, the judgment of conviction pronounced by

the court is void and release from imprisonment may be obtained by habeas corpus.

Third—Because according to the opinion of the Supreme Court cited herein in the aforesaid case John- vs. Zerbst, the petitioner's proper remedy is by writ of habeas corpus.

Wherefore: Jack Walker the petitioner herein prays this Honorable Court for redress and relief and further prays [fol. 6] this Honorable Court that a writ of habeas corpus issue out from under the seal of this Honorable Court Commanding the said James A. Johnston, Respondent to produce the body and person of the said petitioner before this Honorable Court, so that he may be released from further unlawful Custody as prayed for herein, or show good and sufficient cause why this petition for writ of habeas corpus should not issue and the petitioner further prays for such other relief in the premises as Law and Justice require and your petitioner shall pray.

Submitted this 25 day of March 1939.

Jack Walker, Petitioner.

(Verification.)

[fol. 7] (Here follows exhibits A Indictment; B Judgment; C Sentence and D. Commitment. The same being duplicates of exhibits attached to the Return to Order to Show Cause.)

[fol. 8] EXHIBIT "E" TO PETITION

DISTRICT COURT OF THE UNITED STATES OF AMERICA, NORTHERN DISTRICT OF TEXAS

I, Geo. W. Parker, Clerk of the District Court of the United States in and for the Northern District of Texas, do hereby certify the foregoing to be a true and correct copy of the

1st: Indictment;

2nd: Judgment;

3rd: Sentence;

4th: Commitment, together with the Marshal's Return thereon, in cause No. 632-Criminal, entitled The United

States of America, Plaintiff against Jack Walker and Charles Franklin White, with respective aliases, Defendants as fully as the same remains on file and of record in said cause, in my office at San Angelo, Texas.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of said Court, at my office in the city of San Angelo, Texas, in said District, this 6th day of March in the year of our Lord one thousand nine hundred and thirty-nine and of American Independence the 163rd year.

George W. Parker, Clerk of said Court. By Jesse T. Couch, Deputy.

[File endorsement omitted.]

[fol. 9] IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE—Filed March 28, 1939

Good cause appearing therefor and upon reading the verified petition on file herein;

It Is Hereby Ordered that James A. Johnston, Warden of the United States Penitentiary, at Alcatraz Island, State of California, appear before this Court on the 24th day of April, 1939, at the hour of 10 o'clock A. M., of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued herein, as prayed for, and that a copy of this order be served upon the said Warden of the United States Penitentiary, at Alcatraz Island, State of California, by mail and that a copy of the petition and this order be served upon the United States Attorney for this District, his representative herein.

Dated: March 28, 1939.

Michael J. Roche, United States District Judge.

(Admission of service.)

[File endorsement omitted.]

[fol. 10] IN UNITED STATES DISTRICT COURT

RETURN TO ORDER TO SHOW CAUSE—Filed May 15, 1939

Now comes James A. Johnston, Warden of the United States Penitentiary at Alcatraz Island, California, and for

cause why a Writ of Habeas Corpus should not issue herein, shows as follows:

I

That the person hereinafter called "the prisoner" on whose behalf the petition for Writ of Habeas Corpus was filed, is detained by your respondent James A. Johnston as Warden of the United States Penitentiary at Alcatraz Island, California, under and by virtue of the Judgment and Sentence, and Order and Warrant of Commitment duly and regularly issued in Criminal Cause number 632 on the 1st day of May, 1936, by District Judge William Hawley Atwell of the United States District Court for the Northern District of Texas, and Transfer Order issued at Washington, D. C., by Sanford Bates, Director of the Bureau of Prisons of the Department of Justice, dated January 16, 1936.

II

That filed herewith and incorporated herein as though fully set forth and as Respondent's Exhibit "A" are the following:

1. Certified copy of Indictment, Minute Entries, Sentence and Commitment, and Docket Entries in said Crimnal Cause number 632;

2. Transfer Order issued by the Director of the Bureau of Prisons as aforesaid:

3. Record of Court Commitment of United States Penitentiary at Alcatraz, California, pertaining to Jack Walker;

[fol. 11] 4. Affidavit of United States Attorney Clyde O. Eastus;

5. Affidavit of Assistant United States Attorney Joe H. Jones;

6. Affidavit of Elmer J. Reed, United States Probation Officer.

Wherefore, respondent prays that the Petition for Writ of Habeas Corpus be dismissed.

Dated: This 15th day of May, 1939.

James A. Johnston, Warden of the United States Penitenary at Alcatraz Island, California.

[fol. 12] RESPONDENT'S EXHIBIT "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION

INDICTMENT

At a special term of the District Court of the United States for the Northern District of Texas, begun and holden on the 9th day of March, A. D. 1936, within and for the Fort Worth Division of the Northern District of Texas at Fort Worth, Texas, the Grand Jurors for the United States of America selected, tried, empaneled, sworn and charged to inquire into and true presentment make of all offenses under the laws of the said United States committed within said District, upon their oaths present in open court and charge:

That heretofore, to wit, on or about the first day of July, A. D. 1935, L. T. Youngblood, J. T. Harmon and Mrs. Carrie G. Williams were officers, to wit, president, vice-president and cashier, respectively, of the First National Bank, Bronte, Texas, which said First National Bank of Bronte, Texas, was an association formed under the laws of the United States of America for carrying on the business of banking at Bronte, Texas, and was then and there a member bank, as defined in the Act of Congress of December 23, 1913, known as the Federal Reserve Act, of the Federal Reserve Bank of Dallas, and each and all of said officers of the said bank, as such officers, had the custody, direction, and control of the moneys, funds and credits of the said bank, and on or about the first day of July, A. D. 1935, in Bronte, Texas, Coke County, in the San Angelo Division of the Northern District of Texas and within the jurisdiction of this court, Jack Walker, alias Joe C. White, alias Jack Miller; and Charles Franklin White, alias Charles White, alias Charles F. White, alias [fol. 13] Charlie White, whose more true, full and correct names are to the Grand Jurors unknown, hereinafter called defendants, did then and there by force and violence and by putting in fear, feloniously take from the custody and possession of the said L. T. Youngblood, J. T. Harmon and Mrs. Carrie G. Williams, officers of said bank as aforesaid, a large sum of money, to wit, approximately five hundred dollars in currency, a better description of the

said money being to the Grand Jurors unknown, the said money, to wit, approximately five hundred dollars in currency, lawful money of the United States of America, then and there belonging to and being in the care, custody, control, management and possession of the said member bank as aforesaid.

All of which acts of the said defendants were contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Second Count

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further present in open court and charge:

That heretofore, to wit, on or about the first day of July, A. D. 1935, L. T. Youngblood, J. T. Harmon, and Mrs. Carrie G. Williams, officers of the First National Bank, Bronte, Texas, and the said bank was a member bank and had the status as set forth in the first count of this indictment, the allegations concerning which and the relations of the officers of the said bank, as set forth in the first count of this indictment, being incorporation by reference into this count as though fully and affirmatively set forth herein and the said L. T. Youngblood, J. T. Harmon [fol. 14] and Mrs. Carrie G. Williams, as such officers, had the custody, direction and control of the moneys, funds and credits of the said bank;

That on the said date, in Bronte, Coke County, Texas, in the San Angelo Division of the Northern District of Texas and within the jurisdiction of this Court, Jack Walker and Charles Franklin White, with their respective aliases, as set forth in the first count of this indictment, reference to which is here made in this count, whose more true, full and correct names are to the Grand Jurors unknown, hereinafter called defendants, did then and there wilfully, knowingly, unlawfully and feloniously, by the use of a dangerous weapon, to wit, a sawed-off shot-gun, the same being a firearm, in committing the offense described in the first count of this indictment, the description of which offense is incorporated in this count by reference as fully as it set forth herein in detail, put in jeopardy the lives of the said L. T. Youngblood, J. T. Harmon and the said Carrie G. Williams, they, and each of them, being officers of the said

bank aforesaid, while they were in charge of the moneys, funds and credits of said bank.

All of which acts of the said defendants were contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

A True Bill:

W. W. Arterbury, Foreman of the Grand Jury. Clyde O. Eastus, United States Attorney. Joe H. Jones, Assistant United States Attorney.

Said indictment is endorsed as follows:

"No. 632. United States District Court, Northern District of Texas, Fort Worth Division. The United States of [fol. 15] America vs. Jack Walker and Charles Franklin White, with respective aliases. Indictment. Violation of Section 588-b, Title 12, United States Code Annotated. A true bill, W. W. Arterbury, Foreman. Filed in open Court this Apr. 14, 1936, Geo. W. Parker, Clerk, by G. B. Buckley, Deputy. No. 632, Filed 16 day of Apr., 1936, Geo. W. Parker, Clerk, by Jesse T. Couch, Deputy.

[fol. 16] In United States District Court, Northern District of Texas

No. 632—Criminal

Charge: Violating Section 588-b Title 12, United States Code Annotated

The United States of America

vs.

Jack Walker alias Joe C. White, alias Jack Miller, and Charles Franklin White, alias Charles White, alias Charles F. White, alias Charlie White

Minutes of Trial

On the 28th day of April, A. D. 1936, this cause was regularly called for trial and came the United States by Clyde O. Eastus, United States District Attorney, came also the defendants Jack Walker, alias Joe C. White alias Jack Mil-

ler and Charles Franklin White alias Charles White alias Charles F. White alias Charlie White in person, and both parties announced ready for trial; thereupon came a jury of twelve good and lawful men, to wit: J. L. Holland, E. L. Bailey, E. M. Hennersdorf, C. C. Miles, Earl Chapmond, Orzo Eubanks, Tommy Quick, J. B. Hemphill, Earl Reasoner, I. M. Cumbie, J. M. Findlater, A. L. Reynolds, who were duly and legally selected, impaneled and sworn to try this cause, and the Indictment herein being read the said defendant Jack Walker, alias Joe C. White alias Jack Miller entered thereto a plea of "guilty"; and the defendant Charles Franklin White alias Charles White alias Charles F. White alias Charlie White entered thereto a plea of "not guilty", and the jury having heard the Indictment read and the pleas entered thereto by each of said defendants, the evidence introduced, argument of counsel and charge of court, returned into open court the following verdict, to wit:

"We, the jury, find the defendant Jack Walker guilty as charged in the indictment and as plead by him. We further find the defendant Charles Franklin White guilty.

J. Mart Findlater, Foreman.

[fol. 17] And the Court having received said verdict approves same and orders that it be filed and entered. It is further ordered that the defendants and each of them be committed to the custody of the Marshal to await their sentence herein.

[fol. 18] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS

No. 632—Criminal

Charge: Violating Sec. 588-b, Title 12, U. S. C. Annotated

THE UNITED STATES OF AMERICA

vs.

JACK WALKER Alias Joe C. White, Alias Jack Miller

MINUTES OF SENTENCE

On this the 1st day of May, A. D. 1936, the Marshal produced in open court the said Jack Walker alias Joe C. White

alias Jack Miller to receive his sentence herein, and the said Jack Walker alias Joe C. White alias Jack Miller being asked by the court if he had anything to say why the sentence of the law should not be pronounced upon him at this time here now says nothing in bar. And the Court being of the opinion that the said Jack Walker alias Joe C. White alias Jack Miller is guilty of the offense of violating Section 588-b, Title 12, U. S. C. Annotated, as charged in the Indictment and as plead by him, it is ordered and adjudged that his punishment be and it is hereby fixed at imprisonment in the United States Penitentiary at Leavenworth, Kansas, for a term and period of twelve (12) years. And the Marshal of this district is directed seasonably to transport and convey the said Jack Walker alias Joe C. White alias Jack Miller from the City of San Angelo, Texas, to the City of Leavenworth, Kansas, and there deliver him to the proper officer of the United States Penitentiary to be therein imprisoned until the term of imprisonment herein fixed is fully ended, or until he is otherwise discharged according to law.

[fol. 19] DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF TEXAS

COMMITMENT

The President of the United States of America To the Marshal of the Northern District of Texas—Greeting:

Whereas, by the judgment of the Honorable, the District Court of the United States, for the Northern District of Texas, holding session at San Angelo, Texas made and entered on the 1 day of May A. D. 1936, in the case then pending therein, numbered 632-Criminal, and entitled "The United States vs. Jack Walker alias Joe C. White alias Jack Miller, the said Jack Walker alias Joe C. White alias Jack Miller Defendant, was adjudged to be imprisoned in the United States Penitentiary at Leavenworth, Kansas for a term and period of Twelve (12) years.

Charge: Violating Section 588-b, Title 12, United States Code Annotated.

Wherefore, you are hereby commanded that you execute the judgment of the said Court as therein required of you, and as you are bound to do.

Herein fail not, and what you shall have done make due return.

Witness, the Honorable Wm. H. Atwell, Judge of the District Court of the United States for the Northern District of Texas and the seal of the District Court of the United States, for the Northern District of Texas, at San Angelo, Texas this 1 day of May, A. D. 1936.

Geo. W. Parker, Clerk, U. S. District Court, Northern District of Texas, By Ramelle Paul, Deputy.
(Seal.)

Endorsed: "No. 632-Criminal. United States District Court Northern District of Texas. The United States vs. [fol. 20] Jack Walker alias Joe C. White alias Jack Miller. Commitment. For Jack Walker alias Joe C. White alias Jack Miller. 12 years in U. S. Penitentiary at Leavenworth, Kansas. Issued 1 day of May A. D. 1936. Geo. W. Parker, Clerk, By Ramelle Paul, Deputy. Returned and filed May 9, 1936. Geo. W. Parker Clerk by Jesse T. Crouch Deputy.

MARSHAL'S RETURN

Received this Committment at San Angelo, Texas, on the 1st day of May, 1936, and executed same on the 4th day of May, 1936, by delivering the body of the within named Jack Walker, together with a true copy of this writ, to the Warden of the United States Penitentiary at Leavenworth, Kansas, as herein commanded.

J. R. Wright, United States Marshal, by C. S. Brown, Deputy.

[fol. 21] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS

DOCKET ENTRIES BY THE COURT

No. 632

THE UNITED STATES OF AMERICA

vs.

JACK WALKER, and CHARLES FRANKLIN WHITE (with aliases)

Charge: Bank robbery.
Date and Plea: April 28.

Jack Walker—guilty.
Charles Franklin White—Not guilty.
Date and Sentence: April 28. Verdict of guilty as to both defendants.
Jack Walker—12 years.
Charles Franklin White, 12 years, Leavenworth Pen.

[fol. 22] Docket 632

THE UNITED STATES

vs.

JACK WALKER and CHARLES FRANKLIN WHITE, with Aliases

Sec. 588-b, Title 12, U. S. C. A. Bank Robbery

PROCEEDINGS

Apr.	16	1936,	Filing indictment
"	"	"	Issg. 2 capiases
"	27,	"	Flg. return capias, served as to White.
"	27,	"	" & ent. order directing that process issue for deft's.
		"	witnesses fees to be paid by United States.
"	28,	"	Flg. order to feed jury.
May	1,	"	Drawing & flg. jury lists for counsel.
"	1,	"	" jury roll
"	1,	"	Flg. verdict.
"	1,	"	Ent. Judgment, Jack Walker, P. G. White, P.N.G. Verdict Guilty. White 12 yrs. in U. S. Penitentiary
"	1,	"	Issg. 2 committments
June	4,	"	Flg. committment
May	9,	"	Flg. committment.

[fol. 23] DISTRICT COURT OF THE UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF TEXAS

I, Geo. W. Parker, Clerk of the District Court of the United States in and for the Northern District of Texas, do hereby certify the foregoing to be a true and correct copy of the

1. Indictment;
2. Judgment;

3. Sentence;
4. Committment, with Marshal's return thereon;
5. Docket entries by the Court; and
6. Proceedings shown on file docket,

in cause No. 632-Criminal, entitled The United States of America, Plaintiff against Jack Walker and Charles Franklin White, with respective aliases, Defendants as fully as the same remains on file and of record in said cause, in my office at San Angelo, Texas.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of said Court, at my office in the city of San Angelo, Texas in said District, this 4th day of April in the year of our Lord one thousand nine hundred and thirty-nine and of American Independence the 164th year.

George W. Parker, Clerk of said Court, by Jesse T. Couch, Deputy. (Seal.)

[fol. 24] Misc. Form No. 50

Sanford Bates, Director

Department of Justice, Bureau of Prisons, Washington

June 16, 1936.

To the Warden, U. S. Penitentiary, Leavenworth, Kans.:

Whereas, in accordance with the authority contained in title 18, sections 744b and 753f, U. S. Code, the Attorney General by the Director of the Bureau of Prisons has ordered the transfer of Jack Walker, #48924 from the U. S. Penitentiary, Leavenworth, Kans., to the U. S. Penitentiary, Alcatraz Island, Calif.

Now Therefore, you, the above-named officer, are hereby authorized and directed to execute this order by causing the removal of said prisoner, together with the original writ of commitment and other official papers as above ordered and to incur the necessary expense and include it in your regular accounts.

And you, the warden, superintendent, or official in charge of the institution in which the prisoner is now confined, are

hereby authorized to deliver the prisoner in accordance with the above order; and you, the warden, superintendent, or official in charge of the institution to which the transfer has been ordered, are hereby authorized and directed to receive the said prisoner into your custody and him safely keep until the expiration of his sentence or until he is otherwise discharged according to law.

By direction of the Attorney General.

(Signed) Sanford Bates, Director, Bureau of Prisons.

Safer custody

A True Copy: W. F. Dorington, Record Clerk, U. S. P., Alcatraz.

Original.—To be left at institution to which prisoner is transferred.

(Here follow 2 photolithographs, side folios 25-25½)

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Record Form No. 1
(Revised Feb., 1936)

RECORD OF COURT COMMITMENT

Original for Central File

Department of Justice
PENAL AND CORRECTIONAL INSTITUTIONS
UNITED STATES PENITENTIARY
(Institution)
ALCATRAZ, CALIFORNIA
(Location)

Inst. Name WALKER, Jack No. 329-AZ

Alias Joe C. White - Jack Miller Color Age

True Name Jack Walker Name and number of prior commitments to Fed. Inst. Same, #48924, Leavenworth, Kansas

Offense NATIONAL BANK ROBBERY

District ND-TEXAS -SAN ANGELO

Sentence 12 YEARS Costs XX Committed XX Not Committed Paid
Fine XX Committed XX Not Committed Paid

Sentence changed New term Reason therefor

Sentenced MAY 1, 1936 When arrested AUGUST 12, 1935

Committed to Fed. Inst. MAY 4, 1936 Where arrested MEMPHIS, TEXAS

Sentence begins MAY 1, 1936 Residence AMARILLO, TEXAS

Eligible for parole APRIL 30, 1940 Time in jail before trial SINCE ARREST

Eligible for conditional release with good time MAY 21, 1944 Rate per mo. good time 10 Total good time possible 1440 days

Eligible for con. rel. with extra good time

A TRUE COPY:
W. F. DORINGTON
W. F. Dorington
Record Clerk

Forfeited good time Amount forfeited

Restoration good time Amount restored

Expires full term APRIL 30, 1948

Former Com. on Sentence to Other Institutions

No.	Name of Institution	Location
7130	STATE PENITENTIARY	SANTA FE, NEW MEXICO

Person to be notified in case of serious illness or death

Name MR. P.G. WALKER
Relation to prisoner FATHER
Address WASHBURN, TEXAS
Telephone

ACTION OF BOARD

Date	No. app.	Parole: Forth.	Parole: Effect.	Parole: Rel.	Parole: Den.	Parole: Cont.	War. is.	Rev.	Dis. from par.

Releases and recommitments on present sentence other than parole

Date	Method

DETAINERS FILED

Date	Nature of Detainer	Notify Whom	Remarks
3/13/36	LETTER	WARDEN, S.P. NEW MEXICO	Finish serving life sent.

25

OVER

164

AUTHORIZATION FOR DISPOSITION OF MAIL AND PROPERTY

I hereby authorize the_____of the_____
(Warden or Superintendent) (Institution)

_____or his authorized representative, to open and examine all
(Location)
mail matter and express or other packages which may be directed to my address, and to sign my name as endorsement on all checks, money orders, or bank drafts, for deposit to my credit in the Prisoners' Trust Fund, as long as I am a prisoner in said institution.

In the event that I should die, I direct that my_____be notified and that all of my personal effects, including any money remaining to my credit in or due me from said

_____, be immediately transmitted to h____whose address is
(Institution)

_____

_____

Dated at the_____, this

_____day of_____, 19____

_____
(Name and Number)

I hereby certify that the above and foregoing was read and fully explained by me to the above-named prisoner before he signed the same, and that he signed the same voluntarily in my presence, this_____ day of_____, 19____

_____
Record Clerk

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[fol. 26] AFFIDAVIT OF CLYDE O. EASTUS

STATE OF TEXAS,
County of Tarrant:

Before me, the undersigned authority, on this day personally appeared Clyde O. Eastus, who, upon his oath, deposes and says: That he is the United States Attorney for the Northern District of Texas; that he was United States Attorney for the said Northern District of Texas During the year 1936; that during the May term of court for the San Angelo Division of the Northern District of Texas, Cause No. 632, United States vs. Jack Walker (with aliases) and Charles Franklin White was disposed of, the defendant Jack Walker having entered his plea of guilty to the charge of robbery of the First National Bank of Bronte, Texas, on or about the 1st day of July, 1935; that the defendant Charles Franklin White entered a plea of not guilty and was tried before a jury and found guilty; that the Court thereafter sentenced both defendants to twelve years in the United States Penitentiary at Leavenworth, Kansas, from which sentence the defendant White did not appeal.

The defendant Walker had no counsel, as he entered a plea of guilty. At the time the defendant Walker committed the offense in question he was an escaped convict from the State penitentiary of New Mexico, he having a life sentence to serve in that institution. This defendant was returned from the State penitentiary in New Mexico to San Angelo on a writ of habeas corpus ad prosequendum, issued by the Judge of this Court. This defendant was returned from the penitentiary at New Mexico by the then Deputy United States Marshal Elmer J. Reed. On the day of the trial, which was on April 28, 1936, I had the Marshal bring the [fol. 27] defendant Walker to the Federal Building from the jail and talked to him. I asked him whether or not he was guilty and he stated that he was. I asked him if he was going to plead guilty and he said that he was. I asked him if he had a lawyer and he said that he did not want an attorney.

There were three employees of the First National Bank of Bronte who positively identified the defendant Walker in this case in the trial of his codefendant White, as being one of the two men who entered this bank with guns and held it up. There can be no question about his guilt.

This defendant was sentenced on May 1, 1936 by the Judge to twelve years in the Leavenworth penitentiary, and on May 15, 1936, I received a letter from the subject Walker, written on stationary of the Leavenworth penitentiary, in which he stated: He was writing me to thank me for what I did for him in San Angelo. I had explained to this defendant that I thought the Judge would give him greater consideration, if he was guilty, by entering a plea of guilty. I undertook to get him to testify for the Government in this case, but he stated that he did not wish to do that. When he only received twelve years when he could have received twenty-five years, he evidently felt grateful.

Clyde O. Eastus.

(Verification.)

[fol. 28] AFFIDAVIT OF JOE H. JONES

STATE OF TEXAS,
County of Dallas:

Before me, the Undersigned authority, on this day personally appeared Joe H. Jones, who upon his oath says:

That I am and was during the year 1936 Assistant United States District Attorney for the Northern District of Texas, and during the April term of court for the San Angelo Division of the Northern District of Texas, being presided over by Hon. William Hawley Atwell, United States District Judge of said district, the case of United States versus Jack Walker and Charles Franklin White was called for trial. I assisted in the prosecution of this case with District Attorney Clyde O. Eastus. This was a case in which the two defendants were charged with the robbery of the First National Bank of Bronte, Texas, said robbery having occurred on or about the 1st of July, 1935.

I arrived in San Angelo on Saturday preceding the opening of court on Monday, for the purpose of preparing this case for trial, thinking that both defendants intended to enter pleas of not guilty to charges set forth in the indictment. When the case was called for trial, Jack Walker entered a plea of guilty and the defendant, Charles Franklin White, entered a plea of not guilty. Both defendants were given twelve years in the United States penitentiary at Leavenworth, Kansas.

Prior to the calling of the case, District Attorney Eastus and I talked with defendant Walker in the United States Marshal's office at San Angelo, in the presence of deputy marshal Elmer Reed. Walker stated to the District Attorney and me that he intended to enter a plea of guilty; that he had no lawyer and did not desire one, as he felt an attorney [fol. 29] would be of no value to him. Either Mr. Eastus or I told him that in our judgment if he would tell the Judge the truth and testify in the case as to who his companions were at the time of the robbery, that such fact would be considered by the Judge in passing sentence in his case. He stated he would enter his plea of guilty, but he would not testify in the case. Mr. Eastus or I then asked him if Charles Franklin White was with him at the time he robbed the bank. His reply was, "I would rather not say." Mr. Eastus or I one then asked him if the guns taken from him when he was arrested at Memphis, Texas, were the guns which were used in the robbery at Bronte, Texas, and his reply to this question was, "I would rather not say."

After the defendant Walker received the sentence of twelve years and was committed to the Leavenworth Penitentiary he wrote a letter to the United States Attorney, which was received by me and later forwarded to Mr. Eastus at Fort Worth, Texas, and in said letter Walker expressed his thanks to the United States Attorney for the fair and impartial treatment he received in the handling of the case at San Angelo. He also expressed complete satisfaction in receiving a twelve-year sentence, as he stated to Mr. Eastus and to me he was already under a life sentence in the New Mexico state penitentiary, and that he had made a good trade in trading a life sentence at hard labor for a twelve-year sentence in Leavenworth.

I have reviewed the file in this case and refreshed my memory as best I could, and my conclusion is that there was nothing about the case that either defendant was dissatis- [fol. 30] fied with, as the defendant White, who contested his case and lost, did not appeal after being sentenced to twelve years. He was identified by employees in the bank and customers, and there was no doubt about the guilt of either. The defendant Walker stated to the district attorney and me, and as I recall in open court to the Judge, that he was not represented by counsel, and did not desire counsel appointed for him; that he was pleading guilty, because he was guilty, and under those conditions and cir-

cumstances his plea of guilty was accepted and he was sentenced on such plea to twelve years, as above stated.

Joe H. Jones.

(Verification.)
(Seal.)

[fol. 31] AFFIDAVIT OF ELMER J. REED

John Alderman, Chief Probation Officer

Geo. E. Chollar, Walter P. Stokes, Elmer J. Reed, Probation Officers

UNITED STATES DISTRICT COURT, OFFICE OF THE PROBATION OFFICER, NORTHERN DISTRICT OF TEXAS

Abilene, Texas,
April 10, 1939.

My name is Elmer J. Reed, reside at Lubbock, Texas, United States Probation Officer for the Northern District of Texas.

During the year 1936 I was serving as Deputy United States Marshal for the Northern District of Texas.

On April 25th and 26th, 1936, I transferred one Jack Walker from the New Mexico State Penitentiary at Santa Fe, New Mexico to San Angelo, Texas, on a writ of Ad Prosequendum charged with bank robbery at Bronte, Texas.

While making this trip Jack Walker talked to me about the charge of which he was to be tried upon his arrival in San Angelo, Texas. He stated to me that he was guilty and that he was going to enter a plea of guilty when his case was called for trial. He also ask- him if he had an attorney to represent him in his trial and he stated that he did not and that he had no intentions of using a lawyer as he did not think that a lawyer would do him any good.

After arriving in San Angelo, Texas, on the late afternoon of the 26th day of April 1936, this defendant was talking to Hon. Clyde O. Eastus, United States Attorney and his assistant Joe Jones in my presence in the Federal building and he stated to Mr. Eastus that he was going to enter a plea of guilty. Mr. Eastus or Mr. Jones one ask- him if he had a lawyer to represent him and he stated that he did not and that he was not going to use a lawyer.

After this subject had entered his plea and had been sentenced by Hon. Wm. H. Atwell, Judge, he stated to me as we were returning him to the jail that he was perfectly satisfied and that he felt like he had got a break as he had traded them ninety nine years for twelve and that he could do the twelve years alright.

Elmer J. Reed.

(Verification.)

[File endorsement omitted.]

[fol. 32] In United States District Court

[Title omitted]

Order Appointing Attorney for Petitioner—May 25, 1939

It is, by the Court, Ordered that Willard S. Johnston, Esquire, whose address is 111 Sutter Street, San Francisco, California, be and he is hereby appointed as Attorney for the Petitioner herein.

[fol. 33] In United States District Court

Answer of Petitioner to Return to Order to Show Cause —Filed June 27, 1939

Come Now Jack Walker, the petitioner in the above entitled matter, and traversing the return to order to show cause on file herein, denies, admits and alleges as follows:

I

Denies that the issuance of said judgment and sentence, and order and return of commitment, or either or any of them, in criminal cause Number 632 on the first day of May, 1936, by District Judge William Hawley Atwell, of the United States District Court for the Northern District of Texas was due and regular, or was due, or was regular.

II

Denies, except as hereinafter specifically alleged, generally and specifically, each and every, all and singular, the

allegations contained in the affidavits of Clyde O. Eastus, Joe H. Jones and Elmer J. Reed, attached to and incorporated in said return, to the effect that petitioner stated to one or more of said affiants, or in the presence of one or more of them, that petitioner was guilty, that petitioner intended to enter a plea of guilty, that petitioner did not want or desire or intend to use an attorney, and that petitioner felt an attorney would be of no value to him. In this connection, petitioner alleges as follows:

That petitioner first learned that he was to be prosecuted for the crimes charged in the indictment, a certified copy of which is on file herein, on or about the 26th day of April, 1936, at which time petitioner was taken by said affiant, [fol. 34] Elmer J. Reed, from the New Mexico State Penitentiary to the place of trial at San Angelo, Texas; that thereafter and prior to the trial of petitioner said affiant Clyde O. Eastus came to petitioner and in the presence of said Elmer J. Reed and other persons, whose names and identity are unknown to petitioner, asked petitioner to plead guilty to said charges; that in reply thereto petitioner stated that he intended to plead not guilty; that thereupon said affiant Eastus exhibited to petitioner certain pictures of the scene of said alleged crimes and by means of them and otherwise sought to persuade petitioner that petitioner would be proved guilty at the trial of petitioner upon said charges; that thereupon petitioner refused to talk further to said affiant Eastus at said time; that thereafter and shortly prior to said trial of petitioner said affiant Eastus against came to petitioner; that at said last mentioned time petitioner requested said affiant to have said trial continued so that petitioner could communicate with his relatives and try to obtain money to enable him to hire an attorney for petitioner's defense, but that said affiant Eastus told petitioner that this was not possible and told petitioner to plead guilty to said charges, warning him that otherwise petitioner would be sentenced to double the term that he would receive if he pleaded guilty; that at no time herein mentioned did petitioner have any relatives, friends, or acquaintances, in or near San Angelo, Texas, other than petitioner's co-defendant, Charlie White; that at said last mentioned time petitioner asked affiant if petitioner could talk with his co-defendant, Charlie White, or the latter's attorney, but this request was also refused; that thereupon and because [fol. 35] of said warning and in fear of a prison term of

more than twelve years petitioner told said affiant that he would plead guilty to said charges.

III

Denies, except as hereinabove specifically alleged, generally and specifically, each and every, all and singular, the allegations contained in said affidavits to the effect that said affiants or any of them told petitioner that the judge would give petitioner greater consideration, if he was guilty, by entering a plea of guilty.

IV

Alleges that petitioner has no information or belief sufficient to enable him to answer the allegations contained in said affidavits to the effect that petitioner wrote a letter from the United States Penitentiary at Leavenworth, Kansas, to said affiants, or any of them, and basing his denial upon such lack of information or belief, denies, generally and specifically, each and every, all and singular, such allegations.

V

Denies, generally and specifically, each and every, all and singular, the allegations contained in said affidavits to the effect that petitioner stated in open court to the judge that he did not desire counsel appointed for him, that he was pleading guilty because he was guilty, and that petitioner's plea of guilty was accepted under those conditions and circumstances. In this connection, petitioner alleges that at none of the times mentioned in said petition or said return to said order to show cause was petitioner informed, nor did he know or believe, that he was entitled to the assistance of [fol. 36] counsel for his defense; that no one, at any time during said proceedings, asked petitioner if he desired the assistance of counsel for his defense, nor did anyone offer to procure the same for petitioner; that at all of said times petitioner was without any money to pay for the assistance of counsel and believed that he could not obtain the assistance of counsel without money to pay therefor; that petitioner attended school through the fifth grade and thereafter petitioner has had no schooling or education of any kind whatsoever; that petitioner was at all of the time herein mentioned entirely unversed in the law and was unable and unqualified to represent or act for himself in said

proceedings; that at no time during said proceedings was petitioner asked to waive his right to the assistance of counsel for his defense, nor did he by word, act or in any manner whatsoever state or indicate that he waived or intended to waive such right; that hereunto attached and marked Exhibit "A" and by reference incorporated herein and made a part hereof to the same purpose and effect as though it were set forth at length and fully rewritten at this point, is a letter dated at San Angelo, Texas, February 7, 1939, from George W. Parker, Clerk of the United States District Court for the Northern District of Texas, by Jesse T. Couch, Deputy Clerk, addressed to petitioner, showing that petitioner waived none of his rights as aforesaid, and that it was not the practice or custom in said court at said time to procure assistance of counsel for a defendant in a criminal prosecution, unless a plea of not guilty was entered.

[fol. 37]

VI

Denies, generally and specifically, each and every, all and singular, the allegations and conclusions contained in said affidavits to the effect that Petitioner is guilty and that the evidence introduced at said trial showed petitioner to be guilty. In this connection petitioner alleges that he is not guilty of the crimes charged in said indictment, or either of them.

VII

Denies, except as hereinabove set forth, generally and specifically, each and every, all and singular, the allegations contained in said affidavits to the effect that petitioner made statements and admissions as set forth in said affidavits.

Wherefore, petitioner prays that a writ of habeas corpus issue out from and under the seal of this Honorable Court as in petitioner's petition on file herein prayed and for such other and further relief as to this Court may seem meet and proper.

Dated: at San Francisco, California, June 22, 1939.

Willard S. Johnston, Attorney for Petitioner.

(Verification.)
(Admission of service.)

[fol. 38] EXHIBIT "A" TO ANSWER

Department of Justice
United States District Court
Office of the Clerk
Northern District of Texas

San Angelo, Texas, February 7, 1939.

Mr. Jack Walker, #329, Building No. 68, Alcatraz, California.

DEAR SIR:

Replying to your letter, (not dated), beg to advise that there is no waiver on file showing you forfeitted your right to have an attorney. According to the records you entered a plea of guilty, and I know of no law which requires a waiver of attorney to be filed. The writer was not in the court room when your case was called, and I of course do not know just what was said by you, but it has not been the practice or custom to appoint an attorney to defend unless a plea of not guilty is entered, and it is shown that the defendant is unable to employ an attorney.

Am sorry I am unable to furnish you the certified copy as requested by you, but there is no original waiver to make a certified copy from.

Very respectfully, Geo. W. Parker, Clerk, by Jesse T. Couch, Deputy.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

No. 22969-R

JACK WALKER

vs.

JAMES A. JOHNSTON, Warden, U. S. Penitentiary, Alcatraz, California

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS—July 10, 1939

The application for Writ of Habeas Corpus (by Order to Show Cause) came on this day to be heard. W. S. Johnston,

Esq., appeared as Attorney for the Petitioner, and A. J. Zirpoli, Esq., Assistant United States Attorney, was present for the Respondent. After argument by the Attorneys, the application for a Writ of Habeas Corpus was submitted to the Court, and the Court being fully advised, It Is Ordered that said application be and the same is hereby denied, that the Order to Show Cause be discharged, and that the Petition for Writ of Habeas Corpus be and the same is hereby dismissed.

[fol. 40] IN UNITED STATES DISTRICT COURT

AFFIDAVIT FOR APPEAL IN FORMA PAUPERIS—Filed July 27, 1939

UNITED STATES OF AMERICA,
State of California, ss:

Jack Walker, being first duly sworn, deposes and says:

That he is a citizen of the United States by birth and is of legal age; that he is in the custody of the United States and is being confined in the United States Penitentiary on the Island of Alcatraz, in the State of California.

That he is the petitioner in the above-entitled application for a writ of habeas corpus and that he is entitled to commence and maintain the same; that the above-entitled application came on for argument before the above court on the tenth day of July, 1939, and on said day the court made its order denying said application, discharging the order to show cause theretofore made in said proceeding and dismissing affiant's petition for a writ of habeas corpus; that affiant desires to take an appeal from said order to the Circuit Court of Appeals for the Ninth Circuit.

That affiant believes himself entitled to the redress sought to be obtained by said application and by such appeal; that the nature of said appeal is the determination of the scope and extent of affiant's right to assistance of counsel as guaranteed by the sixth amendment to the Constitution of the United States of America in the criminal prosecution of affiant in the United States District Court for the Northern District of Texas in criminal cause number 632 therein.

That affiant is without funds and unable to pay the costs of said appeal or to print the record therein, or to give

security for the same; that there is no person interested [fol. 41] by contract or otherwise in the said appeal or entitled to share in any relief thereunder who is able to pay or secure said costs; that this affidavit is made for the purpose of availing affiant of the rights and privileges in such case provided by section 832 of title 28 of the United States Code;

That unless affiant is permitted to proceed in forma pauperis for review in the Circuit Court of Appeals for the Ninth Circuit of the above-entitled case, he will be utterly unable to rectify the order of the above-entitled court.

Wherefore, affiant prays that he may have leave to prosecute said appeal in forma pauperis without costs or fee, pursuant to said statute.

Jack Walker.

Willard S. Johnston, Attorney for Petitioner.
(Verification.)

[File endorsement omitted.]

[fol. 42] IN UNITED STATES DISTRICT COURT

ORDER PERMITTING APPEAL IN FORMA PAUPERIS—Filed July 27, 1939

Upon reading the affidavit of the above-named petitioner for leave to prosecute an appeal in forma pauperis in the above-entitled matter, and upon good cause appearing therefor:

It Is Hereby Ordered:

That said petitioner be, and he is hereby permitted and allowed without the payment of any fees or costs and without giving any security therefor to prosecute his appeal to the Circuit Court of Appeals for the Ninth Circuit from the order of this court made on the 11th day of July, 1939, denying petitioner's application for a writ of habeas corpus discharging the order to show cause theretofore made in said proceeding and dismissing affiant's petition for a writ of habeas corpus.

Michael J. Roche, United States District Judge.

[File endorsement omitted.]

[fol. 43] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed July 27, 1939

Notice is hereby given that Jack Walker, petitioner above-named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order denying petitioner's application for a writ of habeas corpus, discharging the order to show cause theretofore made in said proceedings and dismissing affiant's petition for a writ of habeas corpus made and entered in this proceeding on the tenth day of July, 1939.

Dated: July 27, 1939.

Willard S. Johnston, attorney for appellant, Jack Walker, One Eleven Sutter Street, San Francisco, California.

[File endorsement omitted.]

[fol. 44] IN UNITED STATES DISTRICT COURT

PRAECIPE FOR RECORD—Filed July 27, 1939

To the Clerk of the Above-entitled Court:

You are hereby requested to make a record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal in the above-entitled cause and to include in such record the following and no other papers and exhibits, to-wit:

1. Affidavit for leave to file petition for writ of habeas corpus filed March 28, 1939, in forma pauperis.
2. Order allowing filing of petition and prosecution in forma pauperis, made March 28, 1939.
3. Petition for writ of habeas corpus dated March 25, 1939, together with exhibits A, B, C, D and E attached thereto.
4. Order to show cause made by the above-entitled court and filed on the 28th day of March, 1939.
5. Return to said order to show cause dated May 15, 1939, together with exhibits 1, 2, 3, 4, 5 and 6 attached thereto.
6. Order of the above-entitled court appointing Willard S. Johnston as attorney for the petitioner herein, dated May 25, 1939.

7. Answer of petitioner to return to order to show cause, filed on the 27th day of June, 1939, together with exhibit A attached thereto.

8. Order of the above-entitled Court, denying application for writ of habeas corpus, discharging order to show cause and dismissing petition for a writ of habeas corpus, [fol. 45] made and entered on July 10, 1939.

9. Affidavit praying leave to take appeal in forma pauperis.

10. Order allowing appeal in forma pauperis.

11. Notice of appeal.

12. This praecipe and service thereon.

Said record is to be prepared as required by law, the Rules of this court, the Federal Rules of Civil Procedure and the Rules of the Circuit Court of Appeals for the Ninth Circuit and is to be filed in the office of the Clerk of said Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, on or before the fourth day of September, 1939.

Dated: July 27, 1939.

Willard S. Johnston, Attorney for Appellant, Jack Walker, One Eleven Sutter Street, San Francisco, California.

(Admission of Service.)

[File endorsement omitted.]

[fol. 46] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 47] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Before Wilbur, Garrecht and Haney, Circuit Judges

ORDER OF SUBMISSION—January 2, 1940

Ordered appeal in above cause argued by Mr. Willard S. Johnston, counsel for appellant, and by Mr. A. J. Zirpoli, Assistant U. S. Attorney, counsel for appellee, and submitted to the court for consideration and decision.

[fol. 48] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE—February 6, 1940

By direction of the Court, Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed in said cause and recorded in the minutes of this court in accordance with the opinion rendered therein.

[fol. 49] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 9284

JACK WALKER, Appellant,

vs.

JAMES A. JOHNSTON, Warden, United States Penitentiary, Alcatraz, California, Appellee

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

Before Wilbur, Garrecht and Haney, Circuit Judges

OPINION—Filed February 6, 1940

HANEY, Circuit Judge:

Appeal has been taken from an order denying a petition for a writ of habeas corpus. Appellant is confined to the United States Penitentiary at Alcatraz Island.

On April 14, 1936, appellant and another were indicted in a United States District Court in Texas. One count charged robbery of a national bank by force and violence and by putting certain employees in fear thereof. A second count charged defendants with using a dangerous weapon in committing the offense described in the first count. On April 28, 1936, a jury was sworn and the indictment was read. Appellant pleaded guilty, and his codefendant pleaded not guilty. The jury returned the following verdict:

"We, the jury, find the defendant Jack Walker guilty as charged in the indictment. We further find the [codefendant] guilty."

On May 1, 1936, judgment was pronounced sentencing appellant to imprisonment for twelve years.

[fol. 50] In his petition for a writ of habeas corpus, appellant alleged that he was being deprived of his liberty contrary to the Sixth Amendment of the Constitution because he did not know he was entitled to counsel when the proceedings under the indictment took place, was not so advised by the court, and did not waive such right. The court below made an order directing appellee to appear and show cause why the writ should not issue. Appellee thereupon filed a return, alleging that appellant was being detained under the judgment and sentence and Order and Warrant of Commitment. Certain documents were attached to the return, including three affidavits.

One affidavit was made by a United States Attorney who stated therein that at the time appellant committed the offense in question he was an escaped convict from New Mexico, and had a life sentence to serve there; that on the day of the trial he talked with appellant; that appellant stated that he was guilty; that appellant said he was going to plead guilty; that he asked appellant "if he had a lawyer and he said that he did not want an attorney"; and that on May 15, 1936, he received a letter from appellant wherein the latter thanked the attorney for what the attorney did for him in connection with the proceedings under the indictment.

One affidavit was made by an assistant United States Attorney, wherein he stated that he was with the United States Attorney when appellant was questioned; that appellant stated "that he had no lawyer and did not desire one, as he felt an attorney would be of no value to him"; that appellant "stated to the district attorney and me, and as I recall in open court to the Judge, that he was not represented by counsel, and did not desire counsel appointed for him; that he was pleading guilty, because he was guilty, and under those conditions and circumstances his plea of guilty was accepted"; and that the letter mentioned by the United States Attorney was one of thanks "for the fair and impartial treatment he received in the handling of the case".

The other affidavit was made by a United States Probation Officer who was previously a Deputy United States Marshal. The officer stated that appellant told him that he [appellant] "had no intentions of using a lawyer as he did not think that a lawyer would do him any good". The [fol. 51] officer also confirmed the statements in the other affidavits that appellant was asked "if he had a lawyer to represent him and he stated that he did not and that he was not going to use a lawyer".

In his traverse to the return, petitioner denied the statements in the affidavits related above, and alleged that the United States Attorney asked appellant to plead guilty, and he replied that he would plead not guilty; that thereupon the attorney exhibited certain pictures and sought to persuade appellant to plead guilty; that appellant refused to talk further with the attorney at that time; that thereafter he asked the attorney for a continuance in order to communicate with his relatives and attempt to obtain money with which he could hire counsel; that the attorney refused the request, and also appellant's request for an opportunity to talk with his codefendant or the latter's counsel; that because of his fear that he would be sentenced to more than twelve years, appellant pleaded guilty; and that such fear was caused by the fact that the attorney told him "to plead guilty to said charges, warning him that otherwise petitioner would be sentenced to double the term that he would receive if he pleaded guilty". Petitioner further alleged that at no time during the proceedings under the indictment, did he know or believe that he was entitled to counsel; that no one told him of such right; that no one offered to procure counsel for him; that at no time during the proceedings was he asked to waive such right; that he had attended school only through the fifth grade, was unversed in the law, was unable and unqualified to represent himself, and actually "believed that he could not obtain the assistance of counsel without money to pay therefor."

Attached to the traverse was a letter from the Deputy Clerk of the Court which rendered the judgment and sentence, and which contained the following statement: "The w ter was not in the court room when your case was called, and I of course do not know just what was said by you, but it has not been the practice or custom to appoint an attorney to defend unless a plea of not guilty is entered, and it is shown that the defendant is unable to employ an attorney".

The court below denied the petition for the writ, and this appeal followed.

[fol. 52] It is provided in 28 U. S. C. A. § 454 that an application for a writ of habeas corpus shall be made "by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known". The following section provides that the "judge to whom such application is made shall forthwith award a writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto". Appellant contends that the preliminary examination mentioned in the latter statute means that the petition is to be examined as on a demurrer, and if the facts stated in the petition disclose that the petitioner is entitled to his release, then the writ must issue, and a full hearing held on the issues made by the petition and the return to the show cause order. Appellant asserts, therefore, that the court below erred in failing to issue the writ, in failing to hold a full hearing on the issues made by the petition and the return to the show cause order, and in denying the petition summarily.

Whether or not such contention is sound we need not consider, because in addition to the procedure mentioned in the statute, another manner of proceeding has been approved by the Supreme Court. By such procedure, upon the filing of the petition, an order to show cause why the writ should not issue is made. A return is made thereto by the detaining officer, thus enabling the court to determine from the petition and the return whether or not a case for the issuance of the writ has been made. Ex parte Yarbrough, 110 U. S. 651, 653; Zahn v. Hudspeth, 10 Cir., 102 F. (2d) 759, 762. The fact that the hearing was summary is not a valid objection because the court is directed by the statute to "proceed in a summary way". 28 U. S. C. A. § 461; Medley, Petitioner, 134 U. S. 160, 174. The effect of the rule is to require petitioner to submit whatever evidence he has with his petition or with his traverse to the return to the order to show cause. It is not suggested here that petitioner has not done so.

The procedure followed here was born of necessity. During the calendar year 1939, 105 petitions for writs of habeas corpus were filed in the court below, from only one of two divisions thereof, of which 74 were filed by prisoners in the

United States Penitentiary at Alcatraz Island. Appellee [fol. 53] presumably has certain duties to perform, the performance of which would be greatly hampered, if not prevented, if we were to require him to bring such prisoners into court. The practical utility of the procedure followed here is apparent.

With respect to the contention that appellant did not competently and intelligently waive his right to counsel, the only evidence supporting such contention is that of appellant. The three affidavits submitted with the return of appellee are in conflict with appellant's statements. From such affidavits it appears that when appellant was asked whether or not he had counsel, he replied to the effect that he did not want counsel. If the affidavits were believed, there is a clear waiver by appellant of his right to counsel. The trial court was not compelled to believe the statements made by appellant—a confessed criminal. The letter attached to the traverse does not conflict with the evidence of waiver. The applicable rules are fully stated in Harpin v. Johnston, No. 9328, this day decided.

Affirmed.

[File endorsement omitted.]

[fol. 54] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 9284

JACK WALKER, Appellant,

vs.

JAMES A. JOHNSTON, ETC., Appellee

DECREE—Filed and entered February 6, 1940

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Southern Division and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[fol. 55] In United States Circuit Court of Appeals for the Ninth Circuit

Order Denying Petition for Rehearing—March 7, 1940

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, filed March 4, 1940, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

[fol. 56] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 57] Supreme Court of the United States

Order Extending Time Within Which to Apply for Writ of Certiorari

On consideration of the application of the petitioner in the above entitled cause, and good cause having been shown,

It is Ordered that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby, extended for a period of 30 days from June 7, 1940.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 14th day of May, 1940.

[fol. 58] Supreme Court of the United States

Order Allowing Certiorari—Filed October 28, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: In forma pauperis. File No. 44522. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 173. Jack Walker, Petitioner, vs. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California. Petition for writ of certiorari and exhibit thereto. Filed June 22, 1940. Term No. 173 O. T. 1940.

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